(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative decision is as provided in subpart C of this part.

§ 904.105 Payment of final civil penalty.

(a) Respondent must make full payment of the civil penalty within 30 days of the date upon which the NOVA becomes effective as the final administrative decision and order of NOAA under § 904.104 or the date of the final administrative decision as provided in subpart C of this part. Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in U.S. currency in the amount of the assessment to the "Department of Commerce/NOAA," by credit card, or as otherwise directed.

(b) Upon any failure to pay the civil penalty assessed, NOAA may request the U.S. Department of Justice to recover the amount assessed in any appropriate district court of the United States, may act under § 904.106, or may commence any other lawful action.

§ 904.106 Compromise of civil penalty.

(a) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty assessed, or which is subject to assessment, except as stated in paragraph (d) of this section.

(b) The compromise authority of NOAA under this section may be exercised either upon the initiative of NOAA or in response to a request by the respondent or a representative subject to the requirements of § 904.5. Any such request should be sent to Agency counsel at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which a NOVA becomes final.

(d) NOAA will not compromise, modify, or remit a civil penalty assessed, or subject to assessment, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the civil penalty is pending in a court of the United States.

§ 904.107 Joint and several respondents.

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each joint and several respondent is liable for the entire penalty but, in total, no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one joint and several respondent is considered a request by the other joint and several respondent(s). Agency counsel, having received a hearing request from one joint and several respondent, will send a copy of it to the other joint and several respondent(s) in the case. However, if the requesting joint and several respondent settles with the Agency prior to the hearing, upon notification by the Agency, any remaining joint and several respondent(s) must affirmatively request a hearing within the time period specified or the case will be removed from the court's docket as provided in § 904.213.

(c) A final administrative decision by the Judge or the Administrator after a hearing requested by one joint and several respondent is binding on all parties including all other joint and several respondent(s), whether or not they entered an appearance unless they have otherwise resolved the matter through settlement with the Agency.

§ 904.108 Factors considered in assessing civil penalties.

(a) Factors to be taken into account in assessing a civil penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior violations, and ability to pay; and such other matters as justice may require.

(b) NOAA may, in consideration of a respondent's ability to pay, increase or decrease a civil penalty from an amount that would otherwise be warranted by the other relevant factors. A civil penalty may be increased if a respondent's ability to pay is such that a higher civil penalty is necessary to deter future violations, or for commercial violators, to make a civil penalty more than a cost of doing business. A civil penalty may be decreased if the